

## Department of Health and Human Services

## § 95.613

(c) *Specific approval requirements.* The State agency shall obtain written approval from the Department:

(1) For regular FFP requests.

(i) For an annual APDU for projects with a total acquisition cost of more than \$5,000,000, when specifically required by the Department.

(ii) For an “As Needed APDU” when changes cause any of the following:

(A) A projected cost increase of \$1,000,000 or more.

(B) A schedule extension of more than 60 days for major milestones;

(C) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(D) A change in system concept, or a change to the scope of the project;

(E) A change to the approved cost allocation methodology.

The State shall submit the “As Needed APDU” to the Department, no later than 60 days after the occurrence of the project changes to be reported in the “As Needed APDU”.

(2) For enhanced FFP requests.

(i) For an Annual APDU.

(ii) For an “As needed” APDU when changes cause any of the following:

(A) A projected cost increase of \$100,000 or 10 percent of the project cost, whichever is less;

(B) A schedule extension of more than 60 days for major milestones. For Aid to Families with Dependent Children (AFDC) Family Assistance Management Information System (FAMIS)-type projects, in accordance with section 402(e)(2)(C) of the Social Security Act, any schedule change which affects the State’s implementation date as specified in the approved APD requires that the Department recover 40 percent of the amount expended. The Secretary may extend the implementation date, if the implementation date is not met because of circumstances beyond the State’s control. Examples of circumstances beyond the State’s control are:

(1) Equipment failure due to physical damage or destruction; or,

(2) Change imposed by Federal judicial decisions, or by Federal legislation or regulations;

(C) A significant change in procurement approach, and/or a scope of pro-

curement activities beyond that approved in the APD;

(D) A change in system concept or scope of the project;

(E) A change to the approved cost methodology;

(F) A change of more than 10% of estimated cost benefits.

The State shall submit the “As Needed APDU” to the Department, no later than 60 days after the occurrence of the project changes to be reported in the “As Needed APDU”.

(3) Failure to submit any of the above to the satisfaction of the Department may result in disapproval or suspension of project funding.

(d) *Prompt action on requests for prior approval.* The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State’s request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4377, Feb. 7, 1990; 56 FR 12356, Mar. 25, 1991; 59 FR 30708, June 15, 1994; 61 FR 39897, July 31, 1996]

### § 95.612 Disallowance of Federal Financial Participation (FFP).

If the Department finds that any ADP acquisition approved or modified under the provisions of § 95.611 fails to comply with the criteria, requirements, and other undertakings described in the approved advance planning document to the detriment of the proper and efficient operation of the affected program, payment of FFP may be disallowed. In the case of a suspension of approval of an APD for enhanced funding, see 45 CFR 205.37(c), 307.40(a) and 307.35(d).

[55 FR 4378, Feb. 7, 1990]

### § 95.613 Procurement standards.

(a) Procurements of ADP equipment and services are subject to the procurement standards prescribed by subpart P of 45 CFR part 74 regardless of any conditions for prior approval. Those

## **§ 95.615**

standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(b) Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local Central Data Processing facility primarily to support the Social Security Act programs covered by this subpart. Service agreements are exempt from these procurement standards.

### **§ 95.615 Access to systems and records.**

In accordance with 45 CFR part 74, the State agency must allow the Department access to the system in all of its aspects, including design developments, operation, and cost records of contractors and subcontractors at such intervals as are deemed necessary by the Department to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system.

[43 FR 44853, Sept. 29, 1978, as amended at 45 FR 10794, Feb. 19, 1980]

### **§ 95.617 Software and ownership rights.**

(a) *General.* The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) *Federal license.* The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) *Proprietary software.* Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section. FFP is not

## **45 CFR Subtitle A (10-1-00 Edition)**

available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

### **§ 95.619 Use of ADP systems.**

ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified.

### **§ 95.621 ADP reviews.**

The Department will conduct periodic onsite surveys and reviews of State and local agency ADP methods and practices to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes consistent with proper and efficient administration under the Act. Where practical, the Department will develop a mutually acceptable schedule between the Department and State or local agencies prior to conducting such surveys or reviews, which may include but are not limited to:

(a) *Pre-installation readiness.* A pre-installation survey including an onsite evaluation of the physical site and the agency's readiness to productively use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which FFP was approved are being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently utilized in support of approved programs or projects.

(d) *Acquisitions not subject to prior approval.* Reviews will be conducted on an audit basis to assure that system and equipment acquisitions costing less than \$200,000 were made in accordance with 45 CFR part 74 and the conditions of this subpart and to determine the efficiency, economy and effectiveness of the equipment or system.

(e) *State Agency Maintenance of Service Agreements.* (1) The State agency will maintain a copy of each service